



# CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY



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LINDA S. ADAMS  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

ARNOLD SCHWARZENEGGER  
GOVERNOR

Certified Mail: 7003 1680 0000 6167 5455

May 22, 2008

Ms. Sonya Harrigfeld, Director  
Stanislaus County  
Department of Environmental Resources  
3800 Cornucopia Way, Suite C  
Modesto, California 95358-9492

Dear Ms. Harrigfeld:

The California Environmental Protection Agency (Cal/EPA), Office of Emergency Services, Office of the State Fire Marshal, Department of Toxic Substances Control, and the State Water Resources Control Board conducted a program evaluation of the Stanislaus County Department of Environmental Resources Certified Unified Program Agency (CUPA) on Wednesday, April 9, 2008 and Thursday, April 10, 2008. The evaluation was comprised of an in-office program review, and field oversight inspections, by State evaluators. The evaluators completed a Certified Unified Program Agency Evaluation Summary of Findings with your agency's program management staff. The Summary of Findings includes identified deficiencies, a list of preliminary corrective actions, program observations, program recommendations, and examples of outstanding program implementation.

The enclosed Evaluation Summary of Findings is now considered final and based upon review, I find that Stanislaus County Department of Environmental Resources' program performance is satisfactory with some improvement needed. To complete the evaluation process, please submit Deficiency Progress Reports to Cal/EPA that depict your agency's progress towards correcting the identified deficiencies. Please submit your Deficiency Progress Reports to Kareem Taylor every 90 days after the evaluation date. The first deficiency progress report is due on July 10, 2008.

Cal/EPA also noted during this evaluation that Stanislaus County Department of Environmental Resources has worked to bring about a number of local program innovations, including using its resources to provide CalARP training to other CUPAs. We will be sharing these innovations with the larger CUPA community through the Cal/EPA Unified Program web site to help foster a sharing of such ideas statewide.

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Thank you for your continued commitment to the protection of public health and the environment through the implementation of your local Unified Program. If you have any questions or need further assistance, you may contact your evaluation team leader or Jim Bohon, Manager, Cal/EPA Unified Program at (916) 327-5097 or by email at [jbohon@calepa.ca.gov](mailto:jbohon@calepa.ca.gov).

Sincerely,

[Original signed by Don Johnson]

Don Johnson  
Assistant Secretary  
California Environmental Protection Agency

Enclosure

cc/Sent via email:

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cc/Sent via Email:

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# CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

Enclosure



LINDA S. ADAMS  
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## **CERTIFIED UNIFIED PROGRAM AGENCY EVALUATION SUMMARY OF FINDINGS**

### **CUPA: Stanislaus County Environmental Resources**

**Evaluation Date: April 9 and 10, 2008**

### **EVALUATION TEAM**

**Cal/EPA: Kareem Taylor**  
**SWRCB: Marci Christofferson**  
**OES: Jack Harrah**  
**DTSC: Mark Pear**  
**OSFM: Francis Mateo**

This Evaluation Summary of Findings includes the deficiencies identified during the evaluation, program observations and recommendations, and examples of outstanding program implementation activities. The evaluation findings are preliminary and subject to change upon review by state agency and CUPA management. Questions or comments can be directed to Kareem Taylor at (916) 327-9557.

	<b><u>Deficiency</u></b>	<b><u>Preliminary Corrective Action</u></b>
<b>1</b>	<p>The CUPA did not correctly report information in its Annual Inspection Summary Report (Report 3) and Annual Enforcement Summary Report (Report 4) for fiscal years (FYs) 04/05 through 06/07. The information for the "Number of Routine Inspections the Return To Compliance (RTC) within Established Standard" in Report 3 and the "Number of Facilities with Violation Type" in Report 4 was either not reported correctly or was not reported. For example:</p> <ul style="list-style-type: none"><li>• In FY 04/05, the CUPA did not report any facilities with violations for any of the program elements in Report 4; however, in Report 3, the CUPA reported that 773 hazardous materials business plan (HMBP), 8 CalARP, 218 underground storage tank (UST), and 280 hazardous waste generator (HWG) inspections RTC.</li><li>• In FY 05/06, the CUPA did not report any HWG facilities with violations; however, in Report 3, the CUPA reported that 410 HWG inspections RTC.</li></ul>	<p>By July 10, 2008, correct the RTC information in Report 3 and the facilities with violation information in Report 4 for FYs 04/05 through 06/07.</p> <p>Submit the corrected Report 3s and Report 4s for FYs 04/05 through 06/07 to Cal/EPA along with the CUPA's first progress report.</p>

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	<ul style="list-style-type: none"> <li>In FY 06/07, the CUPA reported 54 HMBP, 0 CalARP, 3 UST, and 0 HWG facilities with violations; however, in Report 3, the CUPA reported that 770 HMBP, 1 CalARP, 274 UST, and 276 HWG inspections RTC.</li> </ul> <p><b>CCR, Title 27, Section 15290 (2) (3) (Cal/EPA)</b></p>	
2	<p>The CUPA has not inspected every stationary source subject to the CalARP program within the past three years. For example:</p> <ul style="list-style-type: none"> <li>In FY 04/05, the CUPA inspected 8 of 58 (14%) stationary sources.</li> <li>In FY 05/06, no inspections of stationary sources were performed.</li> <li>In FY 06/07, only 1 of 59 (2%) stationary sources was inspected.</li> </ul> <p><b>HSC, Chapter 6.95, Section 25537 (a) (OES)</b></p>	<p>By April 10, 2009, the CUPA will inspect at least 1/3 (approximately 20) of its stationary sources subject to the CalARP Program.</p> <p>By July 10, 2008, the CUPA will submit an action plan, including resource allocation, and/or proposed increase in staffing required to establish and maintain the mandated inspection frequency.</p>
3	<p>The CUPA's "Information Request Process" procedure does not specify that precise locations of hazardous materials and site maps shall not be made available for public inspection.</p> <p>Additionally, the CUPA's "Information Request Process" procedure incorrectly states that trade secret information will not be released by the Department to the public without notifying the business of the request and receiving written approval from the business. Upon notification by the Department of the request, the business has 30 days to seek a declaratory judgment or an injunction preventing the release of the information. In the absence of these court filings, the Department must release the information to the public 30 days after the mailing date of the written notification. Written approval from the business is not required.</p> <p><b>HSC, Chapter 6.95, Sections 25506 (a) and 25511 (c) (OES)</b></p>	<p>By July 10, 2008, the CUPA will submit a draft (or, if possible, a final and approved) Information Request Process procedure that accurately reflects the requirements of HSC Sections 25506, 25511, and, for CalARP, Section 25538 and CCR, Title 19, Section 2775.5, with respect to what information must be withheld from public inspection.</p>
4	<p>The CUPA is not ensuring that UST facility information submitted is correct. The CUPA uses the UPCF forms for gathering required information, however, many of the completed forms reviewed had erroneous information regarding the tanks, piping, and monitoring. While the owner/operator may not know the correct information, the CUPA should review the information and ensure that</p>	<p>Prior to conducting the annual inspection, the CUPA shall review all paperwork submitted for a Permit to Operate and ensure that the tank and piping systems, and the monitoring methods used are sufficiently described and are appropriate for the system. If the</p>

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	<p>it is correct.</p> <p><b>HSC, Chapter 6.7, Section 25286 (a) (SWRCB)</b> <b>CCR, Title 23, Section 2711 (a)</b></p>	<p>forms are incorrect the CUPA shall either correct the current forms, or have the facility owner resubmit new forms that are correct.</p> <p>By April 10, 2009, a review of all of the CUPA's UST facility documents should be completed.</p>
5	<p>The Permit to Operate does not contain all of the required elements. The monitoring methods for the tank and piping systems are not indicated on the permit. In addition, the permit does not state that the monitoring plan is to be retained onsite, but, rather the monitoring records.</p> <p><b>CCR, Title 23, Section 2712 (c) (h) (SWRCB)</b></p>	<p>The CUPA shall revise the permit to operate to include monitoring methods for the tank and piping systems, or attach a copy of the approved monitoring plan using the new Form D, as part of the permit. Include on the permit/conditions that the "approved" monitoring plan is to be retained onsite. This new permit version shall be placed into use by September 1, 2008.</p> <p>By June 30, 2009, the CUPA will ensure that all facilities will utilize the new permit.</p> <p>Along with the CUPA's second progress report (six months), submit an action plan to Cal/EPA that details the process by which the CUPA will issue the permit to operate that includes all the required elements.</p>
6	<p>The monitoring plans reviewed had some missing elements and did not describe the monitoring activities of the tanks and piping. These plans are required to detail how the tanks and piping are to be monitored. The CUPA is required to approve such plans.</p> <p><b>CCR, Title 23, Section 2632 (d) (1) (2) and Section 2641(g) (SWRCB)</b></p>	<p>The CUPA shall ensure that the monitoring plans are submitted with the required elements, and have a sufficient level of detail to fully describe the monitoring of the tank and piping system. The CUPA shall develop review criteria and procedures for approving monitoring (and response/plot) plans.</p> <p>By July 15, 2008, submit to Cal/EPA a written procedure for reviewing and approving monitoring and response/plot plans.</p>
7	<p>The Red Tag enforcement option is not a part of the CUPA's Inspection and Enforcement plan even though Red Tag is used on UST facilities by the CUPA for formal enforcement.</p>	<p>By July 10, 2008, the CUPA should add the Red Tag option to its Inspection and Enforcement plan. The plan should clearly identify how and when the Red Tag option should be used.</p>

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	<b>CCR, Title 27, Section 15200 (a) (6) (SWRCB)</b>	Ensure that all UST enforcement options are included into the Inspection and Enforcement plan.
<b>8</b>	<p>The CUPA has not amended its Inspection and Enforcement Plan to include a discussion of how the CUPA will expend 5% of its hazardous waste related resources to the oversight of Universal Waste handlers and silver-only generators.</p> <p><b>CCR, Title 27, Section 15200 (DTSC)</b> <b>HSC, Chapter 6.5, Section 25201.4 (c)</b> <b>CUPA Forum Board Position</b></p>	By August 1, 2008, the CUPA's Inspection and Enforcement Plan to incorporate a discussion of how the CUPA will expend 5% of its hazardous waste related resources to the oversight of Universal Waste handlers and silver-only generators.
<b>9</b>	<p>The CUPA did not conduct a complete oversight inspection on 03/12/08. During the inspection, the following was noted:</p> <ul style="list-style-type: none"> <li>Inspector failed to determine whether the owner was required to keep a written tank assessment on file certified by a qualified engineer registered in California as required by CCR, Title 22, Section 66265.192.</li> </ul> <p><b>CCR, Title 22, Section 66265.192. (DTSC)</b></p>	By August 1, 2008, the CUPA will determine whether or not the facility had obtained a hazardous waste tank assessment (including secondary containment) from an independent, registered qualified engineer for the hazardous waste tank located on site. If it is determined that the facility had failed to obtain the tank assessment, the CUPA will initiate formal enforcement.
<b>10</b>	<p>The CUPA is not conducting inspections in a manner consistent with state law or regulation. A review of the CUPA's files shows that at least in one instance a tiered permitted facility had not been inspected every three years by the county. Indalex, Inc was inspected on December 29, 2003 by the county, January 11, 2005 by DTSC, and later on March 19, 2008 by the county.</p> <p><b>CCR, Title 27, Section 15200 (b) (2) (DTSC)</b> <b>HSC, Chapter 6.5, 25201.4(b)(2)</b></p>	<p>The CUPA will ensure that all Tiered Permitted Facilities are inspected within a 3 year cycle in contrast to other generators under the 5 year cycle adopted by the county.</p> <p>By September 30, 2008, please send in the FY 07/08 Report 3 reflecting that all such facilities have been inspected.</p>
<b>11</b>	<p>The CUPA is unable to document in certain instances that some facilities that have received a notice to comply citing minor violations have not returned to compliance (RTC) within 30 days of notification. Either the business must submit a RTC Certification in order to document its compliance or in the absence of certification the CUPA must re-inspect the business to confirm that compliance has been achieved. For example, no RTC Certifications or re-inspection reports could be found in the files for the following facilities documenting that all violations had been corrected:</p> <ul style="list-style-type: none"> <li>02/08/2006 inspection conducted at D + W Auto</li> </ul>	<p>The CUPA shall ensure that all facilities with minor violations RTC by documenting this in the file by either a re-inspection report or a RTC certificate.</p> <p>By July 10, 2008, please submit to Cal/EPA a RTC certification or a re-inspection report from 2 facilities that have been cited for minor violations</p>

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	<p>Wreckers located at 531 Crows Landing Road in Modesto, CA.</p> <ul style="list-style-type: none"><li>• 02/23/2006 inspection conducted at Sky Trek Aviation located at 825 Airport Way in Modesto, CA.</li></ul> <p>CCR, Title 27, Section 15200 (f) (2) (C) (DTSC) HSC, Chapter 6.5, Section 25187.8</p>	
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**CUPA Representative**

Nicole Damin  
(Print Name)

Original Signed  
(Signature)

**Evaluation Team Leader**

Kareem Taylor  
(Print Name)

Original Signed  
(Signature)



Certified Unified Program Agency (CUPA)  
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**PROGRAM OBSERVATIONS AND RECOMMENDATIONS**

*The observations and recommendations provided in this section address activities the CUPA are implementing and/or may include areas for continuous improvement not specifically required of the CUPA by regulation or statute.*

1. **Observation:** According to the CUPA's Annual Single Fee invoices for FYs 04/05 through 06/07, the CUPA was not billing the correct amount of UST surcharge. Many UST owners/operators were only billed a UST surcharge for a single tank (\$15) even if they had more USTs. In 2007, the CUPA recognized this deficiency and corrected it. The current UST facility invoices bill owners/operators \$15 per UST.

**Recommendation:** None.

2. **Observation:** The CUPA has its original financial management procedures, but the procedures are not included in the CUPA's Policy and Procedures binder along with the rest of the standard operating procedures. The financial management procedures which include the fee accountability program, single fee system, and surcharge collection and reimbursement procedures have not been updated. The fee accountability program and single fee system have been reviewed by the CUPA and are currently being updated.

**Recommendation:** Cal/EPA recommends that the CUPA update its financial management procedures and include them in the Policy and Procedures binder.

3. **Observation:** The CUPA's HWG inspection reports contain a section where owners/operators can sign their consent for inspections. The HMBP inspection reports do not have this section. Typically, the CUPA inspectors ask for consent from owners/operators before inspections are performed.

**Recommendation:** It is suggested that the CUPA revise its HMBP and UST inspection reports to include a section where owners/operators can sign their consent for inspections. A signed consent by owners/operators will strengthen any enforcement case against violators should formal enforcement become necessary.

4. **Observation:** The inspection reports reviewed did not contain violation classifications along with the cited violations.

**Recommendation:** Classify violations on the inspection reports by either writing the classification next to each violation or by revising the inspection reports for all Unified Program elements so that inspectors may check a checkbox next to a violation identifying it as a Class 1, Class 2, or minor violation.

5. **Observation:** There is a lack of consistency between what is available in the facility files and what is recorded in the CUPA's database. Some of the facility files lacked inspection reports, but inspection report information was recorded in the CUPA's MS Access database. Sometimes violations were recorded in the "Comments" section of the database, but the number of Class 1, Class 2, and minor violations was missing.

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**Recommendation:** Ensure that all hard copy inspection reports are included in facility files. Also, ensure that all of the pertinent details from inspection reports (RTC, number of violations, description of violations) are entered into the CUPA's MS Access database.

6. **Observation:** The general CUPA dispute resolution procedures and the CalARP dispute resolution procedures are located in separate binders.

**Recommendation:** Since the "CUPA Policy & Procedures Manual" should contain all of the CUPA's policies and procedures, regardless of which Unified Program element they apply to, OES recommends that a copy of the CalARP dispute resolution procedure be appended to the general procedure, since it is a little different.

7. **Observation:** There are several elements in the CUPA's 2004 area plan that should be fixed in the 2008 revision:

- The area plan should have been revised in 2007. At the time of the evaluation (April 9-10, 2008), the CUPA was in the process of revising this document.
- The "Optional Model Reporting Form" required by CCR, Title 19, Section 2720 was included in the table of contents (as page iii), but the actual form was not included in the copy provided for the evaluation.
- Appendix D, the "Hazardous Materials Incident Notification" diagram, shows the Governor's Office of Emergency Services as a second- or third-tier notification. In reality, the OES Warning Center is one of the first three notifications that needs to be made ("911" and the CUPA are the other two). See CCR, Title 19, Section 2703 and the OES document, "California Hazardous Materials Spill/Release Notification Guidance", which is available for download from [www.oes.ca.gov](http://www.oes.ca.gov), or available in hardcopy by calling the OES HazMat Unit at (916)845-8741. The notification to OES shown in Appendix E (page E-2) is correct.
- At the time of the evaluation (April 9 - 10, 2008), the SB 391 (pesticide drift) regulations are at the Office of Administrative Law for final review. It is anticipated that they will become effective around the end of May, 2008. If the new area plan is not finalized before these regulations become effective, then the area plan must include the new elements on pesticide drift response.

**Recommendation:** It is recommended that the items mentioned be fixed during the area plan revision.

8. **Observation:** The Permit to Operate is misleading as it shows the number of tanks as compartments with compartment ID numbers when the USTs are not compartmentalized.

**Recommendation:** The SWRCB recommends that the CUPA show all tanks as tanks, not compartments. If a tank is compartmentalized, each compartment is considered to be a separate tank.

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- 9. Observation:** The CUPA tracks Red Tag violations, but not Significant Operational Compliance (SOC).

**Recommendation:** The SWRCB recommends that the CUPA determine SOC at the time of the inspection and track according to the four categories. Add this to the inspection tracking information for each facility inspection in the database. It would be helpful to identify the SOC measures on the inspection checklist to easily determine compliance tracking.

- 10. Observation:** The inspection checklist has improved considerably from previous versions found in the file, but there is no section designated for writing observations, additional details about violations, or details about photos and samples taken. The Official Notice is part of the inspection checklist, but may be more functional as a separate stand-alone document.

**Recommendation:** The SWRCB recommends that the inspection forms include a “comments” section for writing more detailed comments about observations, violations, photos and samples taken, and other important information. The SWRCB suggests that the Official Notice become a “Notice to Comply/Summary of Violations” or “Notice of Violation” where the violations cited and the corrective actions required may be reported in full detail. Any changes to the form procedures should be reflected in the inspection and enforcement plan.

- 11. Observation:** Chief Financial Officer letters are not up-to-date in the files. Mechanisms for showing financial responsibility based on financial records are required to be updated annually based on the most current financial statements.

**Recommendation:** The CUPA should review these annually to ensure that the mechanism is still valid for the facility, otherwise the facility must provide another means for demonstrating financial responsibility.

Although the CFO letters are not expressly required to be submitted to the CUPA annually, but be maintained on site or at the owner/operators place of business, the CUPA may request that they be submitted at anytime. If not submitted, they should be reviewed during the annual inspection and documented that they are in compliance.

- 12. Observation:** The CUPA was able to demonstrate that some complaints which were referred by DTSC from February 01, 2005 to January 01, 2008 were investigated. Follow-up documentation could be found for Complaints Nos. 07-0507-0236,06-0506-0249,06-0106-0038,06-0106-0039,06-0106-0040,06-0906-0502, 07-0907-0527,07-0107-0016,05-0505-0264,06-0306-0116,06-0606-0318, and 07-0607-0321, but not for Complaints Nos. 05-0905-0456, 05-0205-0100,06-0606-0302,07-0907-0527,05-0505-0248,06-0506-0249,07-1207-0710, 07-107-0050, and 07-1107-0651.

**Recommendation:** Tracking of complaints may be improved. Ensure that all complaints are being received by the CUPA from DTSC by providing the e-mail address of the person who should receive complaints to [nlancast@dtsc.ca.gov] complaint coordinator. Investigate and document all complaints referred. Investigation does not always entail inspection, as many issues may be resolved by other means such as a phone call. In any instance, it is suggested that all investigations be documented, either by inspection report or by “note to file” and placed in the facility file. Please continue to notify the complaint coordinator of the disposition of all complaints.

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**13. Observation:** The PBR Tiered Permitting Inspection Checklist may be improved by referencing all requirements under Title 22 and by providing Title 22 citations to all requirements.

**Recommendation:** For example, please also consider the following requirements in addition to those already listed in your current checklist:

- The generator maintains the security for the treatment unit. CCR, Title 22, Section 67450.3 (a)(11)(A);(c)(9)(A)
- The waste stream(s) given on the notification form are appropriate for the tier indicated CCR, Title 22, Section 67450.3(c)(4)
- The exterior of each unit is marked with name of owner/operator, facility identification number, and an individual serial number. CCR, Title 22, Section 67450.3 (c)(7)
- There is a written waste analysis plan. CCR, Title 22, Section 67450.3(c)(8)(A)
- There are waste analysis records. CCR, Title 22, Section 67450.3(c)(9)(D)
- There is a written closure plan for unit. CCR, Title 22 ,Section 67450.3(c) and Section 67450.13
- Financial Assurance for closure cost estimates. CCR Title 22 Section 67450.13

**14. Observation:** The CUPA provides changes in business plan information to the fire and emergency response agencies within 15 days by allowing these agencies to access the CUPA on-line database by issuing them a username and password. Even though the database program is still under “Beta” testing, the CUPA and other fire agencies are already using it for the hazardous materials program. The database program requires cleanup and “debugging.” Areas of data quality concern include site map information, the program element identification, and the chemical inventory information and annual certification.

**Recommendation:** The CUPA should finalize and obtain the most current and usable version of the database program and ensure that fire and other respective agencies obtain accurate information. In addition, the CUPA should follow-up with these agencies to ensure that any issues in obtaining business plan information are addressed.

**15. Observation:** During the file review, some hardcopy business plan files were compared to the electronic database files. The paper files did not contain the same information as in the electronic files. For example, some electronic files did not indicate that businesses had closed, but the paper files for the same businesses contained “post-it” notes or handwritten notes indicating that the businesses had closed. Some paper files did not contain annual certifications, but the electronic files for the same businesses included them.

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**Recommendation:** The CUPA should thoroughly review or establish a quality assurance (QA) and quality control (QC) measure for data and information processing on both the electronic and paper files to ensure that both files contain the same and the most current information.

## **EXAMPLES OF OUTSTANDING PROGRAM IMPLEMENTATION**

1. The CUPA utilizes civil enforcement as a vehicle to penalize Class 1 and recalcitrant facilities.
  - In 2007, the CUPA referred 64 HMBP facilities to the DA for failure to submit annual inventories. The stipulated judgment amounts are estimated to be \$16,500.
  - In 2006, the CUPA referred 58 HMBP facilities to the DA for failure to submit annual inventories by the March 1<sup>st</sup> deadline. The total judgment amount awarded for these enforcement actions is \$240,580.
  - In 2005, the CUPA referred 45 UST facilities to the DA for failure to obtain a certified Designated Operator by the January 1, 2005 mandate. The total judgment amount awarded for these enforcement actions is \$160,420.
2. The CUPA has provided other CUPAs with training in the CalARP program. The CUPA has provided in-house training to inspectors from Tuolumne, Placer, Madera, and Merced counties. The CUPA's senior staff has spoken at the CUPA Conference on the following topics:
  - Audit and Inspection Training for CalARP/RMP Facilities
  - How to Establish a CalARP Program and Formal Evaluation Review
  - UST Designated Operator Enforcement Action
  - Other enforcement related topics
3. The CUPA's "Standard Operating Procedures for Risk Management Program (RMP)" is an excellent guidebook of the procedures for overseeing a CalARP Program.
4. The CUPA's CalARP inspections are extremely thorough. Per Department policy, each inspection also incorporates an audit of the RMP for adequacy (CCR, Title 19, Section 2775.2), ensuring the maximum protection of the public health, safety, and the environment.
5. The CUPA requires owners/operators to complete a form to confirm that they understand the requirements for release reporting and abatement of releases.
6. The Stanislaus County CUPA has developed an informative website providing a directory of services, information bulletins on environmental code, unified program consolidated forms, unidocs inspections forms, a listing of consultants, and links to other state and federal websites.
7. The CUPA is dedicated to effective enforcement and implementation of the HMBP. The CUPA has 10 certified hazardous materials specialists who respond to incidents 24 hours a day, 7 days a week.